IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1949

NO. 6[illegible]41

HEMAN MARION SWEATT,

Petitioner,

vs.

THEOPHILIS SHICKEL PAINTER, *ET AL.*,

Respondents

On Writ of Certiorari to the Supreme Court of the State of Texas

MOTION AND BRIEF

For the Texas Council of Negro Organizations as *Amicus Curiae*

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Grovey v. Townsend, 295 US 45	18
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Smith v. Allwright, 321 US 649	18
West Coast Hotel v. Parrish, 300 US 379	22

OTHER AUTHORITIES CITED

	PAGE
Allen, J. S., The Negro Question in the United States, New York, 1936	11
The Crisis, Vol. 57, No. 1 ("Southern College Teachers Repudiate Jim Crow")	17
The Daily Texan, Jan. 10, 1950	17
The Dallas Morning News, Feb. 2, 1950	19
13 Federal Register 4311, July 26, 1948	20
Frazier, E. Franklin, The Negro in the United States, Macmillan, New York, 1949	9, 11
Harris and Spero, "Negro Problem," Encyclopaedia of the Social Sciences XI	9, 11
Hoffman, F. L., Race Traits and Tendencies of the American Negro, New York, 1897	11
Journal of Negro Education, Vol. XIX, No. 1, Winter, 1950	16
Key, V. O., Southern Politics, Knopf, New York, 1949	18
Lewinson, Paul, Race, Class and Party, Oxford University Press, 1932	9
Murphy, Problems of the Present South, New York, 1909	11
Myrdal, Gunnar, An American Dilemma, New York, 1944	11
New York Times, September 18, 1949	21
The Oklahoma Daily, Jan. 13, 1948	14

The Oklahoma Daily, Nov. 10, 1949 14

The Oklahoma Daily, Dec. 16, 1949 14

Oklahoma Statute, House Bill No. 405, 1949 13

Page, T. N., The Negro, The Southerners' Problem, New York, 1904 11

The Postal Bulletin, Sept. 20, 1949 ("Procedure relative to fair employment practices") 20

Proceedings, Texas State Federation of Labor, 50th Convention, 1948, Fort Worth, Texas, June 21-June 24 20

San Antonio Register, April 9, 1948 19

Simpkins, B. F., The South, Old and New, Knopf, New York, 1947 ..... 8, 9, 10

The Southern Patriot, New Orleans, La., Vol. 7, No. 8, Oct., 1949 15

Stone, A. H., Studies in the American Race Problem, New York, 1908 11

Strong, D. S., The Rise of Negro Voting in Texas, 1948 Amer. Pol. Sci., Rev. 42 18

Thomas, W. H., The American Negro, New York, 1901 11

Thompson, Charles H., "Separate But Not Equal," Southwest Review, Southern Methodist Univ. Press, Dallas, 1948, Vol. XXXIII, No. 2 ..... 16, 17

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On Writ of Certiorari to the Supreme Court of the State of Texas

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for and on behalf of the Texas Council of Negro Organizations, respectfully move that this Honorable Court grant them leave to file the accompanying brief as *amicus curiae*. The Texas Council of Negro Organizations is made up of forty-five state-wide organizations, fraternal, political, religious, educational, or

social,[1] and has as its principal purposes "to serve as a clearing house of information and opinion on Negro life and interracial affairs in Texas, to sensitize the Negro people of Texas to the rights and responsibilities of worthy citizenship in a democratic society of free men, and to make authorized representation of social, economic, political and educational issues affecting the well-being of the Negro people of Texas."

Current social and economic data, relevant to this Court's determination of the reasonableness of the classification at issue, is available, and has not been brought to the attention of the Court by either the parties to this cause or other *amici curiae*. In order that such data will be available to the Court, the Texas Council of Negro Organizations respectfully requests leave to file the accompanying brief.

The Council makes this request, believing that the decision by this Court in the case at bar will largely influence the rate of progress which millions of American Negro citizens will make in achieving their aspirations of first-class citizenship through equality of educational opportunity, and being cognizant of the fact that the decision herein will determine the right of members of affiliated organizations and their sons and daughters to attain the educational advantages to which they believe themselves entitled as citizens of the United States.

Consent of the attorney for petitioner to the filing of

[1] A list of the constituent organizations is set forth in Appendix A.

this brief has been obtained.[2] Consent of the attorney for respondent was requested on December 22, 1949, but no reply to such request has as yet been received. We are today submitting copies of this motion and brief to attorney for respondent and renewing our previous request that he consent to the filing. Such consent, when received, will be promptly submitted to the Court. In the event such consent is not received, we respectfully pray that leave to file this brief be granted notwithstanding. Cf U. S. Supreme Court Rule 27, par. 9 (c).

L. N. D. Wells, Jr.

Marion C. Ladwig

Marion C. Ladwig
Counsel for *Amicus Curiae*

MULLINAX, WELLS AND BALL
of Counsel
1716 Jackson Street
Dallas, Texas.
February 17, 1950

STATE OF TEXAS }
COUNTY OF DALLAS }

Before me, the undersigned authority, on this day appeared L. N. D. Wells, Jr., who being duly sworn, deposed and said that on this 17th day of February, 1950, copies of this motion and the attached brief were served by reg-

istered mail, return receipt requested, upon the Honorable Price Daniel, Attorney General of Texas, Capitol Building, Austin, Texas, counsel for respondent herein, and upon the Honorable Thurgood Marshall, 20 West 40th Street, New York 18, New York, counsel for petitioner.

Susan Gates Morrow

SUSAN GATES MORROW
Notary Public in and for
Dallas County, Texas

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[2] A copy of petitioner's consent is appended hereto as Appendix B.

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On Writ of Certiorari to the Supreme Court of the State of Texas

BRIEF FOR THE TEXAS COUNCIL OF NEGRO ORGANIZATIONS *as Amicus Curiae*

OPINIONS BELOW AND JURISDICTION

The opinions below and jurisdictional statements are set out in full in the brief for the petitioner.

STATEMENT OF THE CASE

The petitioner, Heman Marion Sweatt, upon applying for admission to the University of Texas Law School ap-

proximately four years ago, was denied admission solely because of his race (R 445). Sweatt then brought a mandamus action in a State District Court to compel the State University to admit him as a qualified student. This relief was denied in three separate hearings in the District Court, and also by the Texas Court of Civil Appeals, and the Supreme Court of Texas; each of these courts holding that denial of admission to State University graduate schools to Negro citizens was not violative of the Negro citizen's rights to equal protection of the laws nor of his rights under the Fourteenth Amendment to the Constitution of the United States, so long as "separate but substantially equivalent" educational facilities were afforded on a basis of race segregation.

That the Texas Courts erred in holding that the educational facilities offered petitioner were "substantially equivalent" to those afforded non-Negro citizens is plain from this record. Inasmuch as this point is so apparent from the undisputed facts of this case, and is fully briefed by petitioner and by the *amicus curiae,* the American Jewish Committee, we will not burden the Court with a restatement of argument on this point.

We shall limit our argument to the following point:

SUMMARY OF ARGUMENT

The "separate but equal" doctrine of *Plessy v. Ferguson*, 163 US 537, (upholding state racial segregation statutes) now has no justification when applied to public education on the university graduate level, and should be rejected as a violation of the "equal protection" clause of the Fourteenth Amendment to the United States Constitution.

Plessy v. Ferguson, 163 US 537, decided fifty-four years ago, held a state statute requiring segregation of the Negro race to be a reasonable exercise of the state's police power, and justified to preserve the "public peace and good order." That case was erroneously decided in 1896, based on the then prevailing popular and scientific misconception that the Negro race was inferior, and that a commingling of the "superior" white race with the "inferior" Negro race would lead to public disorder. More than fifty years of learning and experience have demonstrated that no reasonable justification exists for classification (at least for purposes of public education at the graduate level) on the basis of race. Racial segregation in the circumstances disclosed by the record in this case has now been proved unnecessary for the maintenance of public peace and good order. Experience in the fields of education, politics, military service, religion, labor and business has demonstrated that racial segregation in graduate public education is not necessary or justified to preserve the public welfare.

ARGUMENT

When, in 1896, this Court held in *Plessy v. Ferguson* that a state statute requiring segregation of Negro citizens did not transgress constitutional limitations, the decision was placed on the sole ground that racial segregation was justified to preserve the public peace and good order. Even in that day, and in that very case, it was recognized that:

> ". . . every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class." (163 US 537 at 550.)

The Supreme Court of 1896, laboring under the social pressures of irrational race prejudice too commonly accepted by the public at that time, and misled by the "scientific" misconceptions of such distinguished scholars as Charles Darwin, Francis Galton, Thomas Carlyle, and Cesare Lombroso, all of whom affirmed the doctrine of Negro inferiority,[1] held it to be a reasonable exercise of the states' police power to require racial segregation in intrastate travel.

That Court was functioning in a climate of race prejudice; indeed, Mr. Justice Harlan, in his dissent in that very case, points up the fact that the majority decision was based on the proposition that "race prejudice" was regarded "as the supreme law of the land."[2] At that time the sciences of

[1] Cf. Simkins, F. B., *The South, Old and New*, Knopf, New York, 1947, Chapter XXIV, particularly pp. 404 ff.

[2] 163 US 547 at 563.

sociology and anthropology were in their infancy. The strong glare of the light of fifty years' experience had not yet demonstrated the extent to which the theory that the Negro was inferior to other races was wholly fallacious. The Negroes' opportunity to prove how fallacious such theories were, was everywhere blocked. No opportunity existed to prove ability to improve occupational status.[3] Fifty-seven percent of the Negro race was illiterate in 1890; no Negroes voted in the South.[4] The Negroes of that day were commonly regarded as unfit to perform the functions of citizenship.[5] As a recent scholar reports:[6]

> "During the period when 'white supremacy' was being established in the South there was continual racial conflict. Sometimes there was conflict between individual whites and Negroes; at other times racial conflict took the form of organized violence. During Reconstruction the Negroes met the organized violence of the whites with some type of collective action on their part and the racial conflict developed into race riots. But gradually the organized resistance of the Negroes decreased and individual Negroes became the vic-

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[3] Cf. Harris and Spero, "Negro Problem," *Encyclopaedia of the Social Sciences* XI, p. 339.

[4] Simpkins, op. cit., p. 406.

[5] Senator Vardaman spoke what was too commonly accepted in his day when he stated: ". . . it matters not what his (the Negro's) advertised mental and moral qualifications may be, I am just as much opposed to Booker Washington as a voter, with all his Anglo-Saxon re-enforcements, as I am to the cocoanut-headed, chocolate-colored, typical little coon, Andy Dotson, who blacks my shoes every morning. Neither is fit to perform the supreme function of citizenship." (Lewinson, Paul, *Race, Class and Party*, pp. 84-85, Oxford University Press, 1932.)

[6] Frazier, E. Franklin, *The Negro in the United States*, pp. 159-160, Macmillan, New York, 1949.

tims of the organized violence of the whites. A rough indication of this type of violence is provided in the statistics on Negroes lynched in the South. Lynchings in the South increased rapidly from 1882, the first year for which statistics are available, up to 1890 and then showed a sharp rise in the early nineties when the white South began to legalize the subordinate status of the Negro. (See Diagram I.) Although the majority of the Negro victims were lynched for homicide, the avowed justification for lynching was the raping of white women. In over 10 percent of the cases the alleged cause for lynching Negroes included insulting white persons, robbery and theft, and a host of minor offenses. It appears that the lynching of Negroes was essentially an informal type of 'justice' designed to 'keep the Negro in his place.' Community sanction for this type of 'justice' was based upon the general belief that the Negro was a subhuman species and the fear that the Negro would get 'out of hand.' Lynching has been one of the fruits of the crusade to establish 'white supremacy.'"

In short, the Negroes' unfortunate status at the time of *Plessy v. Ferguson* was, as reported by Simpkins:[7]

> "Bereft of hope of political and social equality by the Reconstruction debacle, the Negroes' situation was indeed unfortunate toward the end of the Nineteenth Century . . . The doctrine of white supremacy appeared completely triumphant over the American creed of equality. Fresh arguments concerning the alleged incapacity of the race for improvement seemed to be confirmed by its own internal weaknesses: poverty, industrial inefficiency, crime and ill health."

Scholars of that day appraised the Negro as "inferior," and sought to justify "white supremacy" on the basis of

[7] Simpkins, op. cit., p. 435.

scientific fact.[8] But the fallacy of these views is now too apparent to require exposition. A comparison of the popular and scientific appraisal of the Negro as made in the works cited in footnote 8 with the data and conclusions of more modern scholars [9] demonstrates not only the tremendous strides made in the social sciences, but the utter fallacy of the attitudes which were extant at the time *Plessy v. Ferguson* was decided.

We submit that what the beliefs and attitudes of 1896 led the Court to hold to be a reasonable exercise of the police power for the public good, today, five and one-half decades later, in the light of the knowledge and experience of 1950, is demonstrably unreasonable and unrelated to the public welfare.

But not only have modern social scientists exploded the myth of white supremacy, the Texans' everyday experiences daily demonstrate that despite compulsory segregation laws of the type held reasonably necessary to the public safety in 1896, segregation in Texas and the South is rapidly be-

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[8] Hoffman, F. L., *Race Traits and Tendencies of the American Negro* (New York), 1897; Thomas, W. H., *The American Negro* (New York, 1901); Stone, A. H., *Studies in the American Race Problem* (New York), 1908); Page, T. N., *The Negro, The Southerners' Problem* (New York, 1904); Murphy, *Problems of the Present South* (New York, 1909).

[9] Myrdal, Gunnar, *An American Dilemma* (two volumes, New York, 1944); Harris and Spero, "Negro Problem," *Encyclopaedia of the Social Sciences*, XI, pp. 335-55; Allen, J. S., *The Negro Question in the United States* (New York, 1936); Frazier, E. Franklin, *The Negro in the United States* (New York, 1949).

coming as outmoded as the popular and scientific views which two generations ago sought to justify it.

Particularly in the last four years, since the Second World War, rapid strides have been made in interracial activities. A few typical examples are here presented.[10]

1.

Education

Texas, Oklahoma and Arkansas have had recent experience with Negroes attending graduate schools of their respective state universities on an equal and unsegregated basis. In September, 1949, Herman A. Barnett, a Negro from Lockhart, Texas, was admitted to the University of Texas Medical School.[11] Barnett is presently obtaining all the advantages of non-segregated education; his laboratory partners are white students. Barnett is fully accepted by his

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[10] To the extent possible, we have attempted to present the current fact and opinion with respect to racial segregation in this area from standard works or acknowledged experts in the field. Due to the rapid advances, and the fact that much of such material is so recent as not to have yet been authoritatively published, we have in several instances presented affidavits from those with knowledge of the facts. These are included in the Appendix hereto. We note that the Attorney General of Texas, in his brief on behalf of respondents, likewise has appended to his brief in opposition to granting the writ certain reports, poll results, and other data with respect to the current situation.

[11] Barnett is technically enrolled in the Texas State University for Negroes at Houston under a contract with the University of Texas covering graduate instruction not offered by the Houston institution.

professors and fellow students, and has pursued his studies without incident.[12]

And in Oklahoma, Ada Lois Sipuel Fisher, the plaintiff in *Sipuel v. Board of Regents of the University of Oklahoma*, 322 US 631, is now attending the University of Oklahoma Law School. The semblance of segregation was at first maintained by "Reserved for Colored" signs placed beside the Negro student's desk. But even this gesture toward legislative insistence on segregation[13] has not deterred white students from acceptance of Mrs. Sipuel Fisher and other Negroes as any other members of the class. Those who hold to the philosophy on which *Plessy v. Ferguson* was based may be shocked to learn that Negroes at Oklahoma today eat and study with white students, are housed on the University campus, and are accepted by fellow students without incident; indeed, that the "Reserved for Colored" signs posted by the Law School have been removed by white students.[14]

Mrs. Sipuel Fisher's experience is not an isolated one. About fifty other Negro students entered various schools of the University at the same time, the summer term, 1949. Student reaction to this phenomenon has been good. By

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[12] See Barnett's report attached hereto as Apuendix C, p. 28, *infra.*

[13] See Oklahoma statute, House Bill No. 405, approved by Governor on June 9, 1949, amending 70 O.S. 1941, Sec. 455-7.

[14] See Mrs. Sipuel Fisher's report attached hereto as Appendix D, pp. 29, 30, *infra.*

November, 1949, when 22 Negro students were enrolled for the fall semester, majoring in varied subjects ranging from pharmacy and zoology to social work and school administration,[15] a great majority of the students indicated approval. The November 10, 1949, issue of *The Oklahoma Daily,* page 2, the student newspaper serving the University of Oklahoma, reports as follows:

> "Seventy-six percent of the students and faculty members are in favor of removal of segregation on the campus. This is the result of a poll taken by the Equal Education Committee. A total of 1,092 persons were interviewed. Every school in the university was contacted. Allowing for a wide margin of error, it can be stated that a majority are in favor of removing the 'reserved for colored' signs . . ."[16]

Editorial comment in the Oklahoma student paper is likewise indicative of how the student body reacts to the "problem" of segregation. A lead editorial in *The Oklahoma Daily* recently proclaimed with satisfaction the end of "Jim Crow" in Oklahoma. Stories of Negro students' campus life are featured in other issues of the same publication.[17]

In Stillwater, at Oklahoma A. and M. College, five Negroes were enrolled at the fall 1949 semester. Investigation

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[15] *The Oklahoma Daily,* Dec. 16, 1949, p. 2.

[16] During the pendency of the *Sipuel* case, a student poll taken at the University indicated only 43.6 percent of the students favored admission of Negroes. (*The Oklahoma Daily,* Jan. 13, 1948, p. 1.)

[17] *The Oklahoma Daily,* December 16, 1949, p. 2.

by one of the undersigned disclosed that no segregation is there enforced, even in the seating arrangement of the classes, despite the requirement of the Oklahoma statute cited in footnote 13, supra.

The admission of Negroes to Oklahoma graduate schools has significantly pointed up the rapid change of attitudes not only of white students, but also of the townspeople. Previously, the University City of Norman, Oklahoma, had considered it an unwritten law that no Negro could remain in the city after dark.[18] Today Mrs. Sipuel Fisher has been invited, along with other students, to have dinner in the homes of white families in Norman.[19]

Similar experience is shown in Arkansas. Edith M. Irby was the first Negro student to enter the School of Medicine of Arkansas University. She reports that from the day of her admission, September 27, 1948, the white students were friendly, and at no time have given any indication that they resent her presence, despite the fact that she pursues her course of study on a completely non-segregated basis. Miss Irby's report, appended hereto as Appendix E, p. 31, *infra*, indicates a wholesome and naturally friendly relationship with white fellow-students.

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[18] *The Southern Patriot*, New Orleans, La., Vol. 7, No. 8, October, 1949.

[19] See Appendix D, p. 30, *infra*.

Similar experience [21] in Kentucky, Maryland, West Virginia, Virginia, North Carolina, as well as cited examples of unsegregated military experiences in the South, and other specific experience in Texas, led a recent writer in a leading southern journal to conclude:

> "As far as I have been able to ascertain in the past ten or more years, there has not come to public attention a single instance of the elimination of segregation in the South which has been attended by any untoward results . . . These examples are sufficient . . . to demonstrate that whenever and wherever the leaders in any community decide that segregation is to be eliminated and are willing to stand by their decision, no untoward consequences occur."[22]

The same author recites examples *in Texas* of Negro and white nurses being trained in the same classes without incident, of a Negro attending a technological school in Texas for four years, but then receiving his degree from the Negro college at Prairie View "because of some apprehension over legal technicalities which might invalidate his degree."[23] Further, this same author reports that:

> "After the first Sweatt trial a Negro student from

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[21] Compare the many examples in other southern states recited in "Some Progress in the Elimination of Discrimination in Higher Education in the United States", 19 *Journal of Negro Education* 1 at 4. (Reprinted in part as Appendix F, p. 33 ff, *infra.*)

[22] Thompson, Charles H., "Separate But Not Equal", *Southwest Review*, Southern Methodist Univ. Press, Dallas, 1948, Vol. XXXIII, No. 2, pp. 105-112.

[23] Ibid., p. 111.

> one of the Negro colleges in Austin went over to the University of Texas to borrow a book from the library, and as he was waiting in line to have his book charged, a number of students came up and congratulated him, thinking that he was Sweatt who had been admitted to the University."

The author concludes:

> "It is interesting and instructive to note that the reaction of students is much more progressive and constructive than that of their elders. In several instances in southern universities where student polls have been taken, only a few students were seriously opposed to having Negro classmates. Most of them were either favorable or indifferent."[24]

The justification for this conclusion insofar as the University of Texas student body is concerned appears in the latest student poll taken there in March, 1948, at which time 61.5 percent of the women students and 54.9 percent of the men students were in favor of Negroes attending not only the Law School, but also other graduate schools.[25]

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[24] Ibid., p. 111.

[25] *The Daily Texan*, Jan. 10, 1950, p. 1, col. 5. Cf. "Southern College Teachers Repudiate Jim Crow", *The Crisis*, Vol. 57, No. 1, p. 25 ff., reporting a recent poll of 15,000 southern college teachers by the Southern Conference Educational Fund, Inc., in which of the 3,375 who replied, 70 percent favored immediate admission of Negro students to graduate and professional schools without segregation.

2.

Politics

Mr. Justice Harlan, dissenting in *Plessy v. Ferguson*, referred to "racial prejudice" as "the supreme law of the land." Insofar as political participation was concerned, this was all too true at the time of that decision; indeed, substantially so until after this Court's decision in *Smith v. Allwright*, 321 US 649 (1944).[26] Even after that decision, effort was made in parts of the South, notably South Carolina and a few other southern states, to devise methods of avoiding its effect; but as is aptly demonstrated in V. O. Key's scholarly *Southern Politics*,[27] "the response of the South to the *Allwright* decision is more significant for what has not occurred than for the means that have been devised to circumvent the Constitution." Certainly, that is true in Texas. Despite dire predictions of "trouble" should the Negro be enfranchised in Texas, 75,000 Negroes voted in the 1946 Texas Democratic primary without incident.[28]

The Negroes' political activity is not today limited to the casting of a ballot. The conservative *Dallas Morning News*,

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[26] This Court's decisions in *Nixon v. Herndon*, 273 US 536 (1927), and *Nixon v. Condon*, 286 US 73 (1932); and *Grovey v. Townsend*, 295 US 45 (1935), had resulted in some Negro voting in general elections. Key, V. O., Jr., *Southern Politics*, Knopf, New York, 1949, pp. 619 ff.

[27] Ibid., p. 643.

[28] D. S. Strong, "The Rise of Negro Voting in Texas", *American Political Science Review*, 42, (1948), pp. 510-22.

which on frequent occasion views with editorial alarm the loosening of traditional race segregation patterns, in an article by its chief political writer within the past few weeks, reported on the effort of the Texas Negro to break down segregation, as follows:[29]

> "One victory is already won. That is on the political front . . . Today, Negroes not only vote in the Texas Democratic primaries; they also participate in precinct, county and state conventions. They sit with whites. Segregation has been wiped out at Democratic conventions."

Further indication of Negro political participation without incident of any kind is seen in the April, 1948, election of a Negro business man, G. J. Sutton, to the Board of Trustees of the San Antonio Junior College District.[30] This Negro leader had been sponsored by the interracial Organized Voters League, which though predominantly white, is headed by an equal number of Anglo, Latin, and Negro-Americans.

3.

Other Areas of Crumbling Segregation Barriers

We have demonstrated that integration of the races is already occurring in Texas to some degree, and that in the fields of education and politics such integration has not

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[29] *Dallas Morning News*, February 2, 1950, Sec. III, p. 4. The entire article is reprinted *infra* as Appendix G, pp. 36, ff.

[30] *San Antonio Register*, April 9, 1948, p. 1.

been attended by any untoward result. The same is true in other fields of social, religious and economic integration.

Texas Labor has recently taken a strong stand against segregation. The Texas State Federation of Labor, AFL, at its 1948 convention, unanimously resolved:

> "That it be mandatory upon each city seeking and acquiring future conventions of the Texas State Federation of Labor to provide for a suitable meeting or convention hall where there shall be no discrimination between race, color, or creed in seating and servicing future delegates to Federation conventions . . ."[31]

The Texas State Industrial Union Council, CIO, follows the same practice.

And in everyday business life the Negro in Texas in 1950 daily rubs shoulders with Anglo and Latin-Americans in Texas. The President's executive order 9980 governing fair employment practices within the federal establishment effectively prohibits "discrimination because of race, color, religion; or national origin" in federal employment in Texas as well as throughout the nation.[32] Pursuant thereto, Negroes work with whites in the federal service. In Dallas, Houston, and other Texas cities, Negro mail carriers and clerks work with whites.[33] Negro police protect life and

[31] Proceedings, Texas State Federation of Labor, 50th Convention, 1948, Fort Worth, Texas, June 21-June 24, pp. 210-211.

[32] 13 Federal Register 4311, July 26, 1948.

[33] Cf. order of the Postmaster General, "Procedure relative to fair employment practices", *The Postal Bulletin*, Sept. 20, 1949.

property in many Texas cities. And in the United States Air Force, which has large installations in Texas, integration of the races has been effectively accomplished. For example, at the Lackland Base at San Antonio, Texas, where some 26,000 Air Force personnel are stationed, the *New York* Times reports:[34]

> "All the recruits at vast Lackland Base here, the largest in the whole Air Force, live, eat and study as a body and the grouping together of Negro and white personnel has not caused any incidents. " 'The integration of the base was accomplished with complete harmony,' General Lawrence [Major General Charles W. Lawrence, Commanding General of the Indoctrination Division of the Air Force Training Command] stated, 'Order went through to completely end segregation among trainees on a certain date and when that date arrived the segregation ended. No unpleasant incidents resulted, and the white boys and the Negro boys in the training are getting on well together.' "

Lackland Air Base is not an isolated example. At many military establishments throughout the state, the same conditions prevail.

Finally, religious groups are making great strides in integration of religious activities of Negro and white Texans. As an example of such strides, the Executive Secretary of the Texas Methodist Student Movement, in a report appended hereto,[35] relates in detail the activities of over fifty local campus groups in the field of interracial religious activity.

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[34] *New York Times*, September 18, 1949, p. 53, Sec. L.

[35] Report of Rev. Paul Deats, Jr., Appendix H, p. 40, *infra*.

CONCLUSION

First-class citizenship for Negroes is an impossibility until this Court recognizes that the rule of *Plessy v. Ferguson* is an anachronism which cannot stand before the Fourteenth Amendment.

Despite the facts that the rule of that case has necessarily magnified the social inertia and the prejudice which is the patrimony of many white Texans, and that under the rule of that case normal and natural associations of free peoples have been declared unlawful, great strides in racial integration are now evident.

The social patterns in Texas and the South today are a far cry from the conditions which brought forth *Plessy v. Ferguson.* Now, not only have social scientists scotched the myth of white supremacy, but Texans in everyday contact recognize that the Negro is entitled to a place of dignity in a democracy. If the Constitution does not, as Mr. Justice Murphy suggested in his concurring opinion in *Oyama v. California,*[36] "render irrational as a justification for discrimination those factors which reflect racial animosity," the social scientist and the daily experiences of Texans have done so.

We are confident that this Court will consider the "reasonableness" of the exercise of Texas' police power in the light of current economic and sociological conditions.[37]

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[36] 332 US 633 at 663.

[37] Cf. *West Coast Hotel v. Parrish,* 300 US 379.

There appearing no reasonable basis for enforced segregation on the basis of race at the graduate school level; and to the contrary, it appearing that such segregation deprives Negroes of basic rights guaranteed by the Constitution, we respectfully submit that the Texas Court's denial of the petitioner's right to full and unsegregated educational opportunity should be reversed. The record in this case, the judgment of social scientists, and the daily experience of Texans make it quite apparent that Texans are prepared for such a decision.

Respectfully submitted,

L. N. D. WELLS, JR.

MARION C. LADWIG
Counsel for *Amicus Curiae*

MULLINAX, WELLS AND BALL
of Counsel,
1716 Jackson Street
Dallas, Texas
February 17, 1950

APPENDIX A

List of State-Wide Affiliates of the Texas Council of Negro Organizations

Ancient Free and Accepted Masons of Texas.
Baptist Ministers Conference of the B. M. & E. Convention.
Baptist Missionary and Educational Convention of Texas.
Colored Teachers State Association of Texas.
Democratic Progressive Voters League of Texas.
Free and Accepted Masons of Texas
Gulf State Dental Association.
Grand Court Order of Calanthe, Jurisdiction of Texas.
Grand Lodge, Knights of Pythias, Jurisdiction of Texas.
Heroines of Jericho, Texas Jurisdiction.
Independent Funeral Directors Association of Texas.
Lacy Kirk Williams Ministers' Institute.
Lone Star Medical Association.
National Boule, Alpha Kappa Alpha Sorority (Texas Jurisdiction).
National Council, Knights of Peter Claver (Texas Jurisdiction).
Negro Agricultural Workers' Association of Texas.
Order of the Eastern Star (Free and Accepted Masons of Texas).
Southwest Bar Association, Texas, Oklahoma, Kansas, Arkansas and Louisiana, (Texas Jurisdiction).
Southwestern Athletic Conference.
State Beauticians Association of Texas.
State Congress of Parent-Teachers Association of Texas.
State Sunday School and B. T. U. Congress, B. M. & E. Convention of Texas.
Texas Baptist State Sunday School and B. T. U. Congress, Texas Baptist Convention.

Texas Association of Colored Graduate Nurses.
Texas Baptist Convention.
Texas Baptist State Ministers' Institute.
Texas Commission on Democracy in Education.
Texas Commission on Participation of Negroes in Local, State and Federal Agencies.
Texas Conference of NAACP Branches of Texas.
Texas Federation of Colored Women's Clubs.
Texas Federation of Colored Girls.
Texas Negro Barbers Association.
Texas Negro Burial Association.
Texas Negro Chamber of Commerce.
Texas Negro Press Association.
Texas State Association, IBPOE.
Texas State Congress of Federated Civic and Social Clubs.
Texas Youth Conference, NAACP.
Texas Veterans Counsellors-Coordinators Association.
The Insurance Association of Texas.
The Texas Church Ushers Convention.
Women's Auxiliary, B. M. & E. Convention of Texas.
Women's Auxiliary, Gulf State Dental Association.
Women's Auxiliary, Lone Star Medical Association.
Women's Auxiliary, Texas Baptist Convention.

APPENDIX B

Consent of Petitioner for Filing Amicus Curiae Brief In the SUPREME COURT OF THE UNITED STATES NO. 667

HEMAN MARION SWEATT
vs.
THEOPILIS SHICKEL PAINTER,
Et Al.

} Consent for Filing *Amicus Curiae* Brief

The undersigned, as counsel for the Petitioner herein, does hereby give this written consent to the Texas Council of Negro Organizations, to file a brief as *amicus curiae* in the above numbered and entitled cause, in accordance with Rule 27, subdivision 9, of the rules of this court.

/s/ W. J. Durham
W. J. DURHAM
Counsel for Petitioner

APPENDIX C

Report of the First Negro Student to Enter the Medical School, University of Texas

STATE OF TEXAS)
COUNTY OF GALVESTON) AFFIDAVIT

I am Herman A. Barnett, a Negro from Lockhart, Texas, I am now a medical student at the University of Texas Medical Branch at Galveston, Texas. Even though I am the only Negro student enrolled in this medical school, I have had no unpleasant experiences during any of my contacts with either the other students or the faculty.

From the very first day I was accepted as just another student. I met most of the members of the freshman class during the first day of orientation. Also on the first day, several of the students invited me to work with them as a laboratory partner, and one of the upper classmen invited me out to his home to participate with several other freshmen in a study group which he was leading.

Because of the way in which I have been received by the personnel of the University of Texas Medical School, I am able to devote all my time and energy to the study of medicine without any fear of ill-will or rebuke.

/s/ HERMAN A. BARNETT

Sworn to and subscribed before me this 14th day of February, 1950, in the city of Galveston, Texas.

/s/ Thomas D. Armstrong
THOMAS D. ARMSTRONG
Notary Public in and for
Galveston County, Texas

APPENDIX D

Report of First Negro Student to Enter the Law School, University of Oklahoma

STATE OF OKLAHOMA }
COUNTY OF GRADY } AFFIDAVIT

My name is Ada Lois Sipuel Fisher. I was the plaintiff in the *Sipuel v. Oklahoma University* case, and am now a student in the School of Law at the University of Oklahoma.

After the Oklahoma Legislature passed a law allowing Negroes to attend, on a segregated basis, certain Oklahoma institutions of higher learning, about 50 other Negro students and I entered the University at Norman in June, 1949. I was the only one to enroll in the law school.

In spite of the provisions in the state statutes that we be provided separate classrooms and instructors, I attended classes with all the other entering freshmen. The semblance of segregation was maintained by "Reserved for Colored" signs placed beside my desk. These signs did not keep my classmates from coming back to talk with me and exchanging class notes. Gradually, the students took down the signs. From the first, my classmates were friendly. Now I am accepted as any other member of the class.

The only source of embarrassment, both to me and my classmates, has been the requirement of segregation. In spite of this requirement, however, we study together in the library, and on the lawn under the trees, have "bull sessions" in the halls and on the steps of the law school, and use the same drinking fountains and rest rooms. There

is no segregation whatever in our class meetings and activities. This fall the summer freshmen endeavored to get me elected as class treasurer, but the fall freshmen outnumbered us and took all the class offices. I lost by about 10 votes.

The other Negro students and I eat in the Union "Jug" at a table reserved for us at the back. All during the day, other students either sit at our table or pull their tables near ours in order that we can talk while having coffee.

Not only am I accepted in the School of Law, but I have been treated very kindly by white families in Norman who have invited other Negro students and me to their homes for dinner.

I am happy finally to be enrolled in the State University, both because it is a good school and because it is located near my home, consequently less expensive for me to attend.

ADA LOIS SIPUEL FISHER

Sworn to and subscribed before me this 17th day of February, 1950, in the city of Chickasha, Oklahoma. Oklahoma.

BERTHA C. FLETCHER
Notary Public

{Seal}

APPENDIX E

Report of First Negro Student to Enter the Medical School, University of Arkansas

TO WHOM IT MAY CONCERN:

Being the first Negro student admitted to the School of Medicine of Arkansas University, the other students seem to have gone out of their way to make me feel that I am welcomed. On the very first day, September 27, 1948, all three of the white girls and about a third of the white boys who also were entering as freshmen, made it a special point to meet me. I remember the seating arrangement at our very first class: one of the white boys was sitting to my left; and one of the girls to my right. From then on, I have had no fear that the students would resent my presence.

Here at the Medical School, we have had no problem with the matter of segregation, like my friend, Jackie Shropshire, had when he entered the Law School at the University in Fayetteville, Arkansas. Here there was no attempt to "fence in" my desk, as they did his for the first few days, before his fellow students tore down the railing.

Since we do not have any study halls in the Medical School, we usually study in each other's apartments. The three other girls, all residents of Arkansas, have become very close friends of mine. Several of the fellows and I often during the day go to one of the girl's apartment near the school to discuss and study our lessons. About every other evening, after classes, two of the girls and I go by the grocery store, and take food to my apartment or to

one of theirs, where we prepare our evening meal before studying together late into the night.

At noon, those of us who take our lunches eat together in one of the rooms at the school. Oftentimes, after classes, I go with several of the students to "drive-in" cafes to eat.

I have met so many fine people, here in Little Rock and at the Merical School, that I have been having a good time. Not a single person has been unkind to me.

/s/ Edith M. Irby
EDITH M. IRBY

Subscribed and sworn to before me, in the City of Little Rock, Arkansas, on February 10, 1950.

/s/ ANNA JEAN JONES
Notary Public

{Seal}

APPENDIX F

Excerpt from the Journal of Negro Education

Vol. XIX, No. 1, Page 4, Winter, 1950

EDITORIAL COMMENT

SOME PROGRESS IN THE ELIMINATION OF DISCRIMINATION IN HIGHER EDUCATION IN THE UNITED STATES

Elimination of Secregation at the University Level in the South

Probably the most encouraging step which has been taken in this area has been the admission of Negroes to several Southern state-supported graduate and professional schools which hitherto excluded them because of their race. And what is more important, there has not been reported a single untoward incident of any kind as a result of the change. Prior to the school year 1947-48, only two state-supported universities in the South had admitted a Negro student for more than 50 years. The law school of the University of Maryland admitted a Negro student in 1935, and around ten years ago the State University of West Virginia began to admit Negro students to its graduate and professional curricula. In each case the experiment proved successful beyond anyone's expectations, and Negroes have since become a normal part of the student population.

More recently, state-suported universities in five Southern states have admitted Negroes to various schools and colleges. (1) The University of Arkansas in 1947-48 admitted a Negro to its law school on a segregated basis. The next

year the University admitted a Negro girl to its medical school on a non-segregated basis, and eliminated the segregation initially imposed in the law school. (2) The University of Delaware announced in 1948 that it had revised its policies so as to permit the admission of Negro students to any curricula available at the University which were not available at the Negro college at Dover. A dozen or more Negroes attended the University last summer and several are at present enrolled. (3) The University of Oklahoma, under a directive of the Board of Regents, admitted a Negro student on a segregated basis to its graduate school in 1948. A little later Negro students were enrolled in some of the professional schools on a non-segregated basis. (The case of the student admitted on a segregated basis is now before the U. S. Supreme Court to determine the constitutional validity of the practice.)[7] (4) The University of Kentucky admitted Negro students to its graduate school last year for the first time, enrolled a sizeable number in its summer session, and has several enrolled at the present time. (5) The University of Texas this year admitted a Negro to its medical school courses at Galveston, but required him to register as a student in the Texas State University for Negroes in Houston.

The instances cited here all involve state-supported universities in the South which hitherto had excluded Negroes. In all, state universities in some seven Southern and border states now admit Negro students to various schools and colleges within their university organizations. It might be noted in passing that some of the privately-controlled universities and colleges in Missouri, North Carolina, Virginia

[7] See: McLaurin v. Board of Regents of the University of Oklahoma, et al.

and the District of Columbia also admit Negroes; thus increasing the number of states in this category to ten and the District of Columbia. In addition to the fact that the number of such instances is increasing, the important point to be noted here is not why these institutions have changed their admission policies and practices, but rather that, having changed them, none of the dire predictions which were made before-hand has materialized. As a professor at the University of Kentucky observed:[8] "University of Kentucky tried Plan A this summer. Worked out O.K. as far as I learned. The sky did not fall, neither did any of the buildings fall down, nor did any of the students get contaminated."

Speaking of the attitudes of professors in Southern universities and colleges, attention is called to a poll which has just been completed by the Southern Conference Educational Fund and printed in this number of the *Journal*.[9] More than two-thirds (68%) of the teachers in state and privately supported white higher institutions in the South favor the immediate abolition of segregation on the graduate and professional level. And, I might add, that the attitudes of white students in these institutions are even more favorable.

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[8] See: Section F of the curent number of the *Journal*.

[9] Ibid.

APPENDIX G

Article Printed in The Dallas Morning News February 2, 1950

NEGRO ATTACK ON SEGREGATION

By Allen Duckworth

Last year, in speaking to Negro graduates of the new state university at Houston, the late Beauford H. Jester said:

"Heaven is not reached in a single bound."

Yet, as far as the Texas Negro may be from Heaven, he has taken some long bounds in the last six years. These bounds have been longer than the average Negro, or the average white, probably realizes.

The effort of the Texas Negro to break down segregation can be divided into three phases—political equality, educational equality and social equality.

Strong support by legal talent from the East, especially through the National Association for Advancement of Colored People, is behind the 3-pronged campaign.

One victory already is won. That is on the political front.

Until 1944, the Negro in the South was classed with Republican politics. It was Abraham Lincoln, the Republican, who gave the Negro his freedom. By tradition, the Democratic party of the South was the party of the white man. And the Democratic primary elections were limited to whites.

The United States Supreme Court, controlled by Roosevelt appointees, ruled in 1944 that Negroes must be admitted to Democratic primaries. That reversed the Negro political fealty in Dixie. For he was not unappreciative of what the Democratic party under Roosevelt was doing. Had not the Democratic party done what the Republicans had merely talked about? This appreciation was evident shortly after the Supreme Court ruling. Dallas Negroes raised money for the Roosevelt-Truman Texas campaign.

Today, Negroes not only vote in Texas Democratic primaries; they also participate in precinct, county and state conventions. They sit with whites. Segregation has been wiped out at Democratic conventions. Conservative delegates from Dallas and several other counties were kicked out of the convention at Fort Worth in September, 1948. As the conservatives walked out, they saw dozens of Negroes filing in to take the seats they had just vacated. The Negro had come a long way. It couldn't have happened four years before.

Two years after the Negro won political equality, he turned to educational equality.

Heman Marion Sweatt entered as the main figure on that scene. Sweatt wanted to enroll in the University of Texas law school. When denied that right, Sweatt sued.

District Just Roy C. Archer of Austin held that the State of Texas must (1) provide separate but equal educational opportunities for Negroes, or (2) let them enter the university for whites.

The state heeded the warning and proceeded to establish a separate university for Negroes at Houston. The univer-

sity is now a going concern, with more than 2,000 Negroes studying there.

In order to meet requirements for Sweatt, the university set up a temporary and separate law school near the Capitol grounds in Austin.

Sweatt did not enroll at either the Houston university nor at the branch law school at Austin.

His reason became obvious in later trials and appeals of his lawsuit.

Atty. Gen. Price Daniel attempted to show in the courtroom that it was not the purpose of Sweatt and his attorneys (from the National Association for Advancement of Colored People) to get Sweatt an education alone. They wanted Sweatt in a white university, Daniel argued. The Daniel argument was upheld in Sweatt's own testimony.

Sweatt said he would not enter a separate school for Negroes, even though it might be adjudged equal to the main University of Texas law school.

"I don't believe in segregation," Sweatt said.

The Negro litigation on education is tied closely to the third phase of the NAACP campaign—the drive for social equality, as witness Sweatt's own statement on segregation.

Latest on the antisegregation suits involves not politics, nor education, but recreation. Negroes now are demanding "equal" facilities at state parks. The legal argument of the Negroes is recognized by the State Parks Board. The board

has ordered state parks closed this year unless means can be found to accommodate Negroes.

Just how a state park could give Negroes "equal" accommodations is a puzzle. For instance, along the Frio River in Garner State Park, whites now camp, swim and fish. A Negro could argue that it would not be "equal" for him to camp upstream. No matter where you put the Negro in Garner Park, he could claim that he did not an equal view of the mountains, or of the river, nor did he have the same access to the recreation centers, such as the dance terrace.

Negroes also are shooting for equality on the municipal golf links at Houston. They want equal rights in golfing.

The NAACP lawyers follow a smart path. They believe they can make segregation too expensive. By potshotting on specialized schools, they are bringing the cost of segregation to the front. For instance, if they decide to demand enrollment of a single Negro for a course in mining, the University of Texas might have to admit that Negro at the El Paso branch or build an entirely separate plant for him. In order to set up a segregated mining school, the Negro lawyers estimate, the university would have to spend $5,000,000. And that's a lot of dollars for one student.

The Supreme Court of the United States is due to hear Sweatt case arguments in a few days. The NAACP is banking on this decision. It is the key to their fight against segregation of any kind in Texas and the South.

Here is the statement of the NAACP itself: "When and if the Sweatt case is won, from that moment on segregation will begin to crumble."

APPENDIX H

TEXAS METHODIST STUDENT MOVEMENT
2403 Guadalupe Street
Austin, Texas
February 12, 1950

Report on Interracial Activities

The Texas Methodist Student Movement, with contacts in over fifty local campus groups, has been interested in interracial work for several years. This is partly due to a real concern on the part of white students and leaders for the religious welfare of students in Negro colleges. It is also a response to the action of the last General Conference of The Methodist Church, calling on Methodists to work toward the elimination of segregation in their church meetings.

This work has been most evident in the annual Thanksgiving Conferences held by the movement, beginning in Denton in 1944, when one of the leaders was a Negro minister and educator. In 1945 the conference was held in Corsicana, again with one Negro speaker and this time with four or five Negro students attending sessions and eating with the white students. Since this time, provisions have been made for each conference to be held interracially; however, no Negro delegates attended the 1946 conference at Hillsboro. The 1947 conference was held in Austin, with over twenty Negro delegates from two colleges in attendance. Some students were housed interracially, all delegates ate together in a public "white" cafeteria, and sessions were held in the campus church. In 1948 one Negro speaker and three Negro students attended the conference

in College Station. The 1949 conference, held in Mineral Wells, included fourteen Negro students and faculty members, plus an outstanding Negro speaker. This conference was fed in a public dining room.

There have been several smaller institutes (week-end training schools), held in the last few years on an interracial basis. Students have indicated their interest in holding interracial conferences by setting aside $150 of their state benevolent budget of $2200 to help with expenses of Negro delegates.

The South Central Regional Leadership Training Conference for Methodist students has been held for several years on an interracial basis; it has been invited to hold its June, 1950, session in Dallas on the same basis.

For at least a decade in Austin there has been a cooperative program involving students from Samuel Houston and Tillotson (Negro Colleges) and from the University of Texas "Y" and church groups. Events have included the annual Race Relations Sunday observance (often with an interracial choir), supper and evening meetings for distinguished Negro and white visitors, and leadership projects. The Presbyterian student group at the University of Texas organized and met with a similar group at Tillotson. Negro students and townspeople have been welcomed at white church services and concerts for a number of years.

/s/ PAUL DEATS, JR.
Executive Secretary